Governance Issues in High School and College Athletics

Chapter 11

Management Contexts, Relevant Laws, and Cases

Exhibit 11.1 Management contexts and legal issues pertaining to interscholastic and intercollegiate athletics governance, with relevant laws and cases.

Management Context	*Major Legal Issues*	*Relevant Law*	*Illustrative Cases*
High school governance	Home/charter schools	State association rules	*McNatt, Davis*
	State actor status and due process	Case law and Due Process Clause	*Goss* *Brentwood Academy* *Taylor*
	Judicial deference to policy and equal protection	Equal Protection Clause Law of voluntary associations	*Letendre*
College governance	State actor status and due process and equal protection	Case law and Due Process Clause Equal Protection Clause	*Tarkanian, Cohane*
	NCAA rules infractions	NCAA rules	*Oliver*
	Athlete eligibility	Law of voluntary associations; Antidiscrimination laws; Antitrust laws; and ADA	*Bloom, Pryor, Smith, Bowers*
	Coaching compensation	Antitrust laws	*Law v. NCAA*
	Restrictions on athletics-based aid	Antitrust laws	*White v. NCAA*
	Restricted postseason play	Antitrust laws	*NIT v. NCAA*
	Business of other organizations	Antitrust laws	*NCAA v. Board of Regents, Adidas, Warrior Sports*
	NCAA certification	NCAA rules	
	Athletics reform	Equity in Athletics Disclosure Act	
	Athletic conference contracts	Contract law	*Trustees of Boston College*

Governing Bodies

High school athletics

- National Federation of State High School Associations (NFHS)

College athletics

- National Collegiate Athletic Association (NCAA)
- National Association of Intercollegiate Athletics (NAIA)
- Others (for smaller or more specialized institutions)

Let's think…

- Why do you think it is important we have governing bodies in organized sport?
- What role do they play in the promotion of fair competition?

High School Athletic Association Governance

State legislatures or judiciaries grant governing authority.

Athletic associations implement and enforce regulations.

Member high schools determine their own participation policies (within a state association's rules).

Typically Regulated Areas of Interscholastic Athletics

Exhibit 11.2 Areas of interscholastic athletics commonly regulated by the UHSAA.

Eligibility to participate
- Academic eligibility
- Athlete conduct and discipline
- Dress/grooming
- Transfer between schools
- Charter school students
- Transgender participation
- Age limits
- Homeschoolers
- Pay-to-Play Programs

Recruiting practices & undue influence
Drug testing of athletes
Health and safety requirements
Activity seasons and participation Limits
Coaches, Athletic Director, and Officials' certification
Membership criteria
Sanctioning of sports
Sportsmanship or fan conduct

Home-Schooled Students and Concerns About Athletic Participation

1. Taking limited resources away from enrolled students
2. Allowing home-schoolers to play without having to comply with school rules
3. Diluting school spirit
4. Encouraging recruitment of star athletes

Legal Review

- Imagine you are a home-schooled student (or a parent) testifying in front of a school board. What is your argument for why you (or your student) should be allowed to compete?
- What would be your argument for why he or she should *not* be allowed to compete?

Judicial Deference to Educational Policy

- Courts are reluctant to intervene in the decision making by educational institutions, unless:
  - The procedures were arbitrary and capricious
  - The educational institution failed to follow its own policies.
- Exception: State Action and High School Athletic Associations as State Actors

High School Athletic Associations as State Actors

State actor status means that a person, company or organization must uphold the rights given to us by the United States Constitution.

High School Athletic associations have been deemed to be state actors by the courts

U.S. Constitution requires HSAA to not infringe civil liberties

- Due Process
- Equal Protection
- Unreasonable Searches and Seizures

Due Process

Basic Notions of Fairness in Enforcing Rules

Substantive

- Is the regulation or act within the proper authority of the state actor (e.g. HSAA)?

Procedural

- Has the state actor followed appropriate procedures in exercising its authority?

Procedural Due Process

- Elements of Procedural Due Process Claim
  - Plaintiff has life, liberty, or property interest
  - Defendant (state actor/HSAA) deprived them of that interest
  - Defendant did not afford them adequate procedural fairness in their decision-making

Threshold question often relates to whether denial of the right to participate in athletics is a constitutionally protected life, liberty, or property interest.

Equal Protection Clause

Strict Scrutiny

- Suspect classifications, e.g. race, ethnicity, alienage, & national origin
- Rule must be **necessary** to achieve a **compelling** government interest

Intermediate Scrutiny

- Quasi suspect classifications, e.g. gender
- Is the rule **substantially** related to **important** government interest

Rational Basis Review

- All other classifications
- Is the rule **reasonably** related to **legitimate** government interest

Competitive Advantage Strategies Governance in High School Athletics

01

Become familiar with the home school and charter school movements/policies in your district.

02

If there are no policies, work on formulating and implementing one.

03

Ensure that waiver and enforcement processes are followed in a fair and rational manner.

04

Be consistent and judicious with decision making.

The NCAA

Most visible, most powerful, and most litigated of collegiate sport governing bodies

Deemed by the Supreme Court to be a Non-state actor
(see NCAA v. Tarkanian)

Challenges to regulatory authority include:

Due process concerns	Athletic eligibility	Compensation of coaches	Aid to students	Postseason play

NCAA Structure

Representative form of governance

Structure of Division I:

- Leadership Council
- Legislative Council
- Board of Directors

Executive Committee

NCAA Rules Enforcement

All representatives of member institutions are obligated to cooperate fully with the NCAA.

Committee on Infractions

Infractions Appeals Committee

NCAA Regulatory Authority—Nearly Every Aspect of Intercollegiate Athletics

- Ethical conduct
- Conduct/employment of personnel
- Amateurism
- Recruiting
- Academic eligibility
- Financial aid
- Athletes' benefits and expenses
- Playing and practice seasons
- Championship events
- Enforcement policies
- Division membership
- Certification
- Academic performance program

Legal Review

- What do you think of the July 1, 2021 decision that student-athletes can receive compensation for their name, image and likeness?
  - On the one hand, colleges and universities make big money from their athletic programs and they should share the wealth.
  - On the other hand, it is the school's brand and the student-athletes are already "paid" with their scholarships for education and exposure to professional teams/scouts.

Limits to the NCAA's Regulatory Authority

Internally

- Must follow its own rules and policies
- Usually provides for some minimal due process

Externally

- Private Association Law
- Federal Antidiscrimination Statutes
- Antitrust laws

Private Association Law

- Inconsistencies between association's bylaws and actions taken (arbitrary & capricious)
- Unfair treatment of a member (denied notice, hearing)
- Association's actions are prompted by fraud, malice, or collusion
- Association's bylaws conflict with public policy or law

Federal Anti-Trust Law

NCAA Business Practices

- Broadcasting Agreements
- Rival Leagues/Events
- Equipment and Uniform Designs

Restrictions on Coaches Salaries

Restrictions on Athletes

- Post-graduate eligibility
- Financial Aid
- Endorsements/NIL

NCAA Certification Process

- Evaluate and verify integrity of athletic programs in regards to:
  - Effective governance/commitment to rules compliance
  - Academic integrity
  - Gender equity, diversity, and student-athlete well-being

Knight's Foundation Commission on Intercollegiate Athletics

In 1991, documented the need for reform in intercollegiate athletics

Serves as a constraint on NCAA governance

Advocates for reform

Academic Performance Program and Academic Progress Rate (APR)

Equity in Athletics Disclosure Act

- Requires athletic programs to make an annual report on:
  - Graduation rates
  - Athletic scholarships
  - Participation opportunities
  - Revenues and expenditures
  - Coaches' gender and salaries
- To monitor schools' progress in improving graduation rates and gender equity

Intercollegiate Athletics Conferences

Provide regular competition among similar institutions in loosely defined geographic regions

If institutions are members of the NCAA, they must abide by NCAA regulations (unless conference rules are more stringent)

Nonstate actors

Areas Typically Regulated by Intercollegiate Athletic Conferences

- Governance policies and procedures
- Conference membership requirements
- Rules compliance and enforcement procedures
- General athletics regulations
  - Eligibility
  - Financial aid
  - Recruiting
  - Sportsmanship
  - Control of relationships with the broadcast media
  - Scheduling of competitions
  - Procedures for hosting conference championships
  - Crowd control policies
  - Ticket distribution policies

Taxation of College Athletics Governance Organizations

- Nonprofit, tax-exempt organizations
- But also, a multi-million-dollar business—so should it be allowed to maintain its tax-exempt status?

What is your opinion?
Do you think the NCAA should continue to be tax exempt?
Why or why not?

Competitive Advantage Strategies, *Governance in college athletics*

Become familiar with the rules and regulations of the athletics association and work closely with your lawyer to correctly interpret the sport organization's rules.

Consider seeking a remedy under antitrust laws if your company has been negatively affected by a sport organization's rules..

Competitive Advantage Strategies, *continued*

Become familiar with the NCAA's certification process so you can proactively improve your athletics program.

Consult a tax advisor about decisions regarding sponsorship payments versus advertising payments.